IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE J.B.KOSHY
&
THE HONOURABLE MR. JUSTICE K.P.BALACHANDRAN

MONDAY, THE 18TH JUNE 2007 / 28TH JYAISHTA 1929

MFA.No. 68 of 1999(B)

O.P(MV).NO.1467/1995 OF MOTOR ACCIDENT CLAIMS TRIBUNAL, OTTAPALAM.
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APPELLANT:

SHAJITHA, MINOR, AGED 16 YEARS,
REPRESENTED BY HER GUARDIAN & FATHER MOHAMMED,
AGED 48 YEARS, S/O. MALIYAKKAL NEDUMPRATH VEERAVU,
RESIDING AT MURSHAD MANZIL, THALAMUNDA, EDAPPAL POST,
PONNANI TALUK.

BY ADV. SMT.M.A.VAHEEDA BABU,
SRII.K.M.FAISAL.

RESPONDENTS:
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1. **P.K. KUMARAN, S/O. KOPPAN,**
CHALISSERY POST, AGE NOT KNOWN. *(DIED)

2. **VINODKUMAR, S/O. THILAKAN, KALATHIL VEEDU,**
KALLADATHUR.P.O., KUMARANALLOOR - 678 552.

3. **NEW INDIA INSURANCE CO-LTD.,**
ANUGRAHA BUILDINGS,
VADAKKANCHERRY ROAD,
KUNNAMKULAM.P.O.

***ADDL. RESPONDENTS 4 TO 9 IMPLEADED:**

*4. **BHANUMATHI, W/O. LATE P.K. KUMARAN,**
`PRAGATHI', CHALISSERY.P.O.,
CHALISSERY.

M.F.A. NO. 68/1999:

***5. DEVADAS, S/O. LATE P.K. KUMARAN, DO. DO.**

***6. MOHANDAS ALIAS UNNI, DO. DO.**

***7. HARIDAS ALIAS BABU, DO. DO.**

***8. MAHESH, DO. DO.**

***9. AJISH, DO. DO.**

***ADDL. RESPONDENTS 4 TO 9 ARE IMPLEADED AS THE LEGAL HEIRS OF THE 1ST RESPONDENT AS PER ORDER DATED 18/06/2007 IN C.M.P. NO. 597/2001.**

BY ADV. SRI.R.T.PRADEEP,
SRI.A.C.DEVY.

THIS MISC. FIRST APPEAL HAVING BEEN FINALLY HEARD ON 18/06/2007,THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

J.B.KOSHY & K.P.BALACHANDRAN, JJ.

M.F.A.No.68 OF 1999

Dated 18th June, 2007

JUDGMENT

Koshy,J.

Appellant/petitioner, at the age of 13, met with an accident by which she sustained serious injuries. She claimed a compensation of Rs.5,00,000/=. The Tribunal awarded only Rs.55,062/= including reimbursement of medical expenses. The Tribunal found that the accident occurred due to the negligence of the driver of the vehicle insured by the third respondent insurance company and third respondent was directed to deposit the award amount. Only quantum of compensation is disputed in this appeal.

2. Ext.A3 wound certificate shows that appellant was admitted in the West Fort Hospital, Thrissur with the following injuries:

> 1. Extensive lacerated wound (R) thigh extending from hip to knee. Involving whole of anterior and lateral aspect exposing muscles with skin loss.
>
> 2. Lacerated wound right leg above ankle 5 x 2 x 2cm posterior laterally. Abrasion right side of lower abdomen."

Ext.A4 shows that two skin grafting operations were conducted. She was treated as an inpatient for 38 days. Ext.A7 is the treatment certificate. The injuries noted in Ext.A7 are fracture to Malleolus (R) apart from the extensive lacerated wound over the lateral aspect of right thigh, right leg and abdomen. It is stated that she sustained open fracture involving lateral malleolus of right ankle. In the disability certificate marked as Ext.A8, doctor has certified that she is having permanent disability of 15% and a partial temporary disability of 30% for the first five months from the date of injury. It is also stated that she has scar over lower 1/5th of leg and ankle as well as an extensive ugly's scar over her right thigh. Tribunal found that she suffered extensive lacerated wound over right thigh extending from hip to knee with skin loss. The healed wound has created an ugly's scar over her right thigh and lower part of leg. According to the appellant, she had to discontinue her study at the level of S.S.L.C. Only Rs.15,000/= was granted for disability and loss of earning capacity even though 15% permanent disability was certified by the doctor. There is no materials to disbelieve the above certificate. Under second schedule Rs.15,000/= only can be taken as notional income of a non-earning person. If calculation is done on a multiplier method taking guidance from the second

schedule, compensation payable will be Rs.15,000 x 15 x 15 = 33,750/= (See ***Smt.Supe Dei and others*** v. ***M/s.National Insurance Company Ltd. and another*** (JT 2002 (Suppl.1) SC 451) where it is held that second schedule can be taken for guidance in calculation of compensation under Section 166 also). So, the appellant will be entitled to an additional amount of Rs.23,690/= on this count. The claimant, being an unmarried girl, disfiguration of the leg will certainly affect her prospects of marriage and there is a clear discrimination as there is disfigurement in the entire thigh as well as lower part of the leg. We award Rs.5,000/= as compensation for disfiguration . It is submitted that father and mother of the claimant already died and another operation is needed as it is not completely healed. Only actual medical bills were reimbursed by the Tribunal. There could be many expenses not covered by actual medical bills. Therefore, we award Rs.5,000/= for future medical bills and other treatment expenses already incurred. Thus, total additional compensation payable will be Rs.33,690/=. The above amount of Rs.33,690/=, over and above the decreed amount by the Tribunal, should be deposited by the third respondent insurance company with 8% interest from the date of application till its deposit. On deposit of the amount,

appellant is entitled to withdraw the same.

The appeal is partly allowed.

J.B.KOSHY
JUDGE

K.P.BALACHANDRAN
JUDGE

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